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THE HONORABLE ROSANNA MALOUF PETERSON  
MAY 14, 2019 AT 6:30 P.M.  
WITHOUT ORAL ARGUMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSHUA BRENT STULLER,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

CHELAN COUNTY, WASHINGTON;  
BILL LARSEN, in his official capacity as  
Interim Director of the Chelan County  
Regional Justice Center; LESLIE  
CARLSON, in her official capacity as the  
Chelan County Regional Justice Center  
Mental Health Manager, and their officers,  
agents, employees, and successors,

Defendants.

**NO. 2:18-cv-00178-RMP**

**DEFENDANTS' REPLY TO  
PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION TO  
COMPEL**

THIS COURT should grant Defendants' Motion to Compel and Order the  
production of documents requested in Bill Larsen's First Set of Interrogatories  
and Request for Production of Documents (ECF No. 36, Exhibit 1).

**LAW AND ARGUMENT**

The Plaintiff has not provided any basis for this Court to deny Defendants' Request for Production.

Plaintiff waived any objections to discovery propounded by Defendants. Plaintiff's Response Memorandum concedes that the Plaintiff did not file an Objection within thirty (30) days of receiving the Request for Production of Documents in this matter. The Plaintiff's failure to respond within thirty (30) days constitutes a waiver. Since Plaintiff waived their Objections, this Court should not consider any Objection now asserted by the Plaintiff in their Response Memorandum. Moreover, this Court should hold that any Objections are waived, as they were not asserted within thirty (30) days.

The documents requested by the Defendant are within the possession, custody or control of the Plaintiff. "Actual possession, custody or control is not required, however. 'A party may be ordered to produce a document in the possession of a non-party entity if that party had the legal right to obtain the document or has control over the entity who is in possession of the document'". Ochotorena v. Adams, 210 Lexus 144402 \*8 (E.D. Cal. 2010), *citing* Soto v. City of Concord, 162 Frd 603, 620 (N.D. Cal. 1995).

The Court in Allan v. Woodford, 207 Lexus 11026 (E.D. Cal. 2007) held:

“Control” need not be actual control; courts construe it broadly as “the legal right to obtain documents upon demand.” United State v. Int’l Union of Petroleum & Indus. Workers, (Ninth Circuit refused to compel an international union to produce documents belonging to local union affiliates in response to a subpoena where the international union did not have physical possession of the documents); Scott v. Arex, Inc., 124 F.R.D. 39, 41 (D.Conn.1989) (party controls document if it has right, authority, or ability to obtain documents on demand). “Legal right” is evaluated in the context of the facts of each case. In re Folding Carton Antitrust Litig., 76 F.R.D. 420, 423 (D.Ill.1977). The determination of control is often fact specific. Central to each case is the relationship between the party and the person or entity having actual possession of the document. Estate of Young v. Holmes, 134 F.R.D. 291, 294 (D.Nev.1991). The requisite relationship is one where a party can order the person or entity in actual possession of the documents to release them. *Id.* This position of control is usually the result of statute, affiliation or employment. *Id.* In re Citric Acid Litig., (9<sup>th</sup> Cir. 1999) 191 F.3d 1090, 1107 (court cannot order production of documents held by a separate legal entity, where requested party is not in actual possession or custody of the documents.)

In this case, the Plaintiff is in possession, custody or control of his high school transcripts and other schooling records requested in the Request for Production made by the Defendants. The Plaintiff has the legal right to walk up and request that these institutions provide these documents to the Plaintiff. As a result, pursuant to 9<sup>th</sup> Circuit case law, he is in possession, custody or control of

1 these documents and this Court should order that the Plaintiff produce all  
2 documents requested by the Defendants.  
3

### 4 CONCLUSION

5  
6 In this case, this Court should order the Plaintiff to respond and produce the  
7 documents identified in Request for Production No. 2 and Request for Request for  
8 Production No. 3.  
9

10 The Plaintiff has waived any Objections to these documents, and these  
11 documents are within the Plaintiff's possession, custody or control. Therefore,  
12 Defendants respectfully requests this Court grant Defendants' Motion to Compel.  
13  
14  
15

16 RESPECTFULLY SUBMITTED THIS 29<sup>th</sup> day of April, 2019.

17  
18 CARLSON & McMAHON, PLLC

19 By /s/ Patrick McMahon  
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21 Attorney for Defendants

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29 WCRP05-02450\PLE Federal\REPLY TO RESPONSE-042919  
30

**CERTIFICATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that on April 29 2019, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Washington using the CM/ECF system which will send notification of such filing to:

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And I certify that I have mailed by United States Postal Service the foregoing to the following non CM/ECF participants:

Signed at Wenatchee, Washington on April 29, 2019.

/s/ Patrick McMahon  
PATRICK MCMAHON, WSBA #18809